

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

GARDEN CITY BOXING CLUB, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-07-1276-D
	)	
JOSE R. FONSECA, individually and as	)	
officer, director, shareholder, agent and/or	)	
principal of El Rinconcito Bar, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Before the Court is Plaintiff's Request for Entry of Default and Motion for Default Judgment Against Defendants [Doc. No. 7]. Plaintiff seeks a judgment by default under Fed. R. Civ. P. 55 against Defendants Jerry C. Moon and Paulette Davie, individually and as officers, directors, shareholders, agents and/or principals of El Rinconcito Bar. Plaintiff presents evidence of service by mail pursuant to Okla. Stat. tit. 12, § 2004(C)(2), and seeks to enter defaults based on Defendants' alleged refusals of mail delivery.<sup>1</sup>

Although the motion has not been timely opposed, the Court declines to deem it confessed pursuant to Local Civil Rule LCvR7.1(g). Plaintiff has failed to make an adequate showing of compliance with the service statute regarding the manner of mailing, *see* Okla. Stat. tit. 12, § 2004(C)(2)(b), and has failed to comply with the statute regarding an entry of default upon a refusal of service by mail, *see id.* § 2004(C)(2)(c). For these reasons, and because Plaintiff has not complied with Local Civil Rule LCvR55.1(a) regarding entry of default by the Clerk, Plaintiff is not

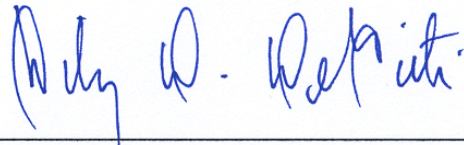
---

<sup>1</sup> Plaintiff incorrectly cites in its motion, Fed. R. Civ. P. 12(C)(2)(c), which does not exist; the correct citation is Okla. Stat. tit. 12, § 2004(C)(2)(c).

entitled to entries of default against these defendants pursuant to Fed. R. Civ. P. 55(a). Consequently, Plaintiff's motion for a default judgment pursuant to Fed. R. Civ. P. 55(b) must also be denied.

IT IS THEREFORE ORDERED that Plaintiff's combined motion for entry of default by the Clerk and motion for default judgment are DENIED.

IT IS SO ORDERED this 17<sup>th</sup> day of March 2008.



---

TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE